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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
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12
13 LESLIE J. LEVINE, solely in his
14 capacity as trustee of The Marvin H.
Schein Descendants' Trust,

15 Plaintiff,

16 vs.

17 MICHAEL D. BROWN, an
18 individual,

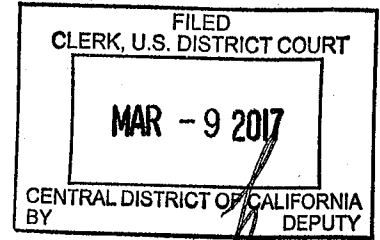
19 Defendant.
20

Case No. 2:15-cv-09453-GHK (Ex)

Before Magistrate Judge
Charles F. Eick

**STIPULATED PROTECTIVE
ORDER**

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22 **IT IS HEREBY STIPULATED** by and among Plaintiff and Judgment
23 Creditor Leslie J. Levine, solely in his capacity as trustee of The Marvin H. Schein
24 Descendants' Trust, on the one hand, and Defendant and Judgment Debtor Michael
25 D. Brown, on the other hand (and which parties are collectively referenced herein as
26 the "Parties"), by and through their respective counsels of record, that in order to
27 facilitate the exchange of information and documents which may be subject to
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1 confidentiality limitations on disclosure due to federal laws, state laws, and privacy
2 rights, the Parties stipulate as follows:

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4 1. PURPOSES AND LIMITATIONS

5 Disclosure and discovery activity in this action are likely to involve
6 production of confidential, proprietary, or private information for which special
7 protection from public disclosure and from use for any purpose other than
8 prosecuting this litigation may be warranted. Accordingly, the parties hereby
9 stipulate to and petition the court to enter the following Stipulated Protective Order.
10 The parties acknowledge that this Order does not confer blanket protections on all
11 disclosures or responses to discovery and that the protection it affords from public
12 disclosure and use extends only to the limited information or items that are entitled
13 to confidential treatment under the applicable legal principles. The parties further
14 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
15 Order does not entitle them to file confidential information under seal; Civil Local
16 Rule 79-5 sets forth the procedures that must be followed and the standards that will
17 be applied when a party seeks permission from the court to file material under seal.

18 2. DEFINITIONS

19 2.1 Challenging Party: a Party or Non-Party that challenges the
20 designation of information or items under this Order.

21 2.2 "CONFIDENTIAL" Information or Items: information
22 (regardless of how it is generated, stored or maintained) or tangible things that
23 qualify for protection under Federal Rule of Civil Procedure 26(c).

24 2.3 Counsel (without qualifier): Outside Counsel of Record and
25 House Counsel (as well as their support staff).

1 2.4 Designating Party: a Party or Non-Party that designates
2 information or items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.5 Disclosure or Discovery Material: all items or information,
5 regardless of the medium or manner in which it is generated, stored, or maintained
6 (including, among other things, testimony, transcripts, and tangible things), that are
7 produced or generated in disclosures or responses to discovery in this matter.

8 2.6 Expert: a person with specialized knowledge or experience in a
9 matter pertinent to the litigation who has been retained by a Party or its counsel to
10 serve as an expert witness or as a consultant in this action.

11 2.7 House Counsel: attorneys who are employees of a party to this
12 action. House Counsel does not include Outside Counsel of Record or any other
13 outside counsel.

14 2.8 Non-Party: any natural person, partnership, corporation,
15 association, or other legal entity not named as a Party to this action.

16 2.9 Outside Counsel of Record: attorneys who are not employees of
17 a party to this action but are retained to represent or advise a party to this action and
18 meet any of the three criteria: (1) they have appeared in this action on behalf of that
19 party; (2) they are affiliated with a law firm which has appeared on behalf of that
20 party; or (3) they are attorneys within Judgment Creditor’s law firm.

21 2.10 Party: any party to this action, including all of its officers,
22 directors, employees, consultants, retained experts, and Outside Counsel of Record
23 (and their support staffs).

24 2.11 Producing Party: a Party or Non-Party that produces Disclosure
25 or Discovery Material in this action.

26 2.12 Professional Vendors: persons or entities that provide litigation
27 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
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1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 2.13 Protected Material: any Disclosure or Discovery Material that is
4 designated as "CONFIDENTIAL."

5 2.14 Receiving Party: a Party that receives Disclosure or Discovery
6 Material from a Producing Party.

7 3. SCOPE

8 The protections conferred by this Stipulation and Order cover not only
9 Protected Material (as defined above), but also (1) any information copied or
10 extracted from Protected Material; (2) all copies, excerpts, summaries, or
11 compilations of Protected Material; and (3) any testimony, conversations, or
12 presentations by Parties or their Counsel that might reveal Protected Material.
13 However, the protections conferred by this Stipulation and Order do not cover the
14 following information: (a) any information that is in the public domain at the time of
15 disclosure to a Receiving Party or becomes part of the public domain after its
16 disclosure to a Receiving Party as a result of publication not involving a violation of
17 this Order, including becoming part of the public record through trial or otherwise;
18 and (b) any information known to the Receiving Party prior to the disclosure or
19 obtained by the Receiving Party after the disclosure from a source who obtained the
20 information lawfully and under no obligation of confidentiality to the Designating
21 Party. Any use of Protected Material at trial shall be governed by a separate
22 agreement or order.

23 4. DURATION

24 Even after final disposition of this litigation, the confidentiality
25 obligations imposed by this Order shall remain in effect until a Designating Party
26 agrees otherwise in writing or a court order otherwise directs. Final disposition shall
27 be deemed to be the later of (1) dismissal of all claims and defenses in this action,
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1 with or without prejudice; (2) final judgment herein after the completion and
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
3 including the time limits for filing any motions or applications for extension of time
4 pursuant to applicable law; and (3) full satisfaction of the underlying judgment
5 entered herein.

6 **5. DESIGNATING PROTECTED MATERIAL**

7 **5.1 Exercise of Restraint and Care in Designating Material for**
8 **Protection.** Each Party or Non-Party that designates information or items for
9 protection under this Order must take care to limit any such designation to specific
10 material that qualifies under the appropriate standards. The Designating Party must
11 designate for protection only those parts of material, documents, items, or oral or
12 written communications that qualify – so that other portions of the material,
13 documents, items, or communications for which protection is not warranted are not
14 swept unjustifiably within the ambit of this Order.

15 Mass, indiscriminate, or routinized designations are prohibited. Designations that
16 are shown to be clearly unjustified or that have been made for an improper purpose
17 (e.g., to unnecessarily encumber or retard the case development process or to
18 impose unnecessary expenses and burdens on other parties) expose the Designating
19 Party to sanctions.

20 If it comes to a Designating Party's attention that information or items that it
21 designated for protection do not qualify for protection, that Designating Party must
22 promptly notify all other Parties that it is withdrawing the mistaken designation.

23 **5.2 Manner and Timing of Designations.** Except as otherwise
24 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
25 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
26 protection under this Order must be clearly so designated before the material is
27 disclosed or produced.

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1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents, but
3 excluding transcripts of depositions or other pretrial or trial proceedings), that the
4 Producing Party affix the legend "CONFIDENTIAL" to each page that contains
5 protected material. If only a portion or portions of the material on a page qualifies
6 for protection, the Producing Party also must clearly identify the protected portion(s)
7 (e.g., by making appropriate markings in the margins).

8 A Party or Non-Party that makes original documents or materials
9 available for inspection need not designate them for protection until after the
10 inspecting Party has indicated which material it would like copied and produced.
11 During the inspection and before the designation, all of the material made available
12 for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
13 identified the documents it wants copied and produced, the Producing Party must
14 determine which documents, or portions thereof, qualify for protection under this
15 Order. Then, before producing the specified documents, the Producing Party must
16 affix the "CONFIDENTIAL" legend to each page that contains Protected Material.
17 If only a portion or portions of the material on a page qualifies for protection, the
18 Producing Party also must clearly identify the protected portion(s) (e.g., by making
19 appropriate markings in the margins).

20 (b) for testimony given in deposition or in other pretrial or trial
21 proceedings, that the Designating Party identify on the record, before the close of
22 the deposition, hearing, or other proceeding, all protected testimony.

23 (c) for information produced in some form other than documentary and
24 for any other tangible items, that the Producing Party affix in a prominent place on
25 the exterior of the container or containers in which the information or item is stored
26 the legend "CONFIDENTIAL." If only a portion or portions of the information or
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1 item warrant protection, the Producing Party, to the extent practicable, shall identify
2 the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
4 to designate qualified information or items does not, standing alone, waive the
5 Designating Party's right to secure protection under this Order for such material.
6 Upon timely correction of a designation, the Receiving Party must make reasonable
7 efforts to assure that the material is treated in accordance with the provisions of this
8 Order.

9 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
11 designation of confidentiality at any time. Unless a prompt challenge to a
12 Designating Party's confidentiality designation is necessary to avoid foreseeable,
13 substantial unfairness, unnecessary economic burdens, or a significant disruption or
14 delay of the litigation, a Party does not waive its right to challenge a confidentiality
15 designation by electing not to mount a challenge promptly after the original
16 designation is disclosed.

17 6.2 Meet and Confer. The Challenging Party shall initiate the
18 dispute resolution process by providing written notice of each designation it is
19 challenging and describing the basis for each challenge. To avoid ambiguity as to
20 whether a challenge has been made, the written notice must recite that the challenge
21 to confidentiality is being made in accordance with this specific paragraph of the
22 Protective Order. The parties shall attempt to resolve each challenge in good faith
23 and must begin the process by conferring directly (in voice to voice dialogue; other
24 forms of communication are not sufficient) within 14 days of the date of service of
25 notice. In conferring, the Challenging Party must explain the basis for its belief that
26 the confidentiality designation was not proper and must give the Designating Party
27 an opportunity to review the designated material, to reconsider the circumstances,
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1 and, if no change in designation is offered, to explain the basis for the chosen
2 designation. A Challenging Party may proceed to the next stage of the challenge
3 process only if it has engaged in this meet and confer process first or establishes that
4 the Designating Party is unwilling to participate in the meet and confer process in a
5 timely manner.

6 6.3 Judicial Intervention. If the Parties cannot resolve a challenge
7 without court intervention, the Designating Party shall file and serve a motion to
8 retain confidentiality under Civil Local Rule 7 (and in compliance with Civil Local
9 Rule 79-5, if applicable) within 21 days of the initial notice of challenge or within
10 14 days of the parties agreeing that the meet and confer process will not resolve
11 their dispute, whichever is earlier. Each such motion must be accompanied by a
12 competent declaration affirming that the movant has complied with the meet and
13 confer requirements imposed in the preceding paragraph. Failure by the Designating
14 Party to make such a motion including the required declaration within 21 days (or
15 14 days, if applicable) shall automatically waive the confidentiality designation for
16 each challenged designation. In addition, the Challenging Party may file a motion
17 challenging a confidentiality designation at any time if there is good cause for doing
18 so, including a challenge to the designation of a deposition transcript or any portions
19 thereof. Any motion brought pursuant to this provision must be accompanied by a
20 competent declaration affirming that the movant has complied with the meet and
21 confer requirements imposed by the preceding paragraph.

22 The burden of persuasion in any such challenge proceeding shall be on
23 the Designating Party. Frivolous challenges, and those made for an improper
24 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
25 parties) may expose the Challenging Party to sanctions. Unless the Designating
26 Party has waived the confidentiality designation by failing to file a motion to retain
27 confidentiality as described above, all parties shall continue to afford the material in
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1 question the level of protection to which it is entitled under the Producing Party's
2 designation until the court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material
5 that is disclosed or produced by another Party or by a Non-Party in connection with
6 this case only for prosecuting, defending, or attempting to settle this litigation. Such
7 Protected Material may be disclosed only to the categories of persons and under the
8 conditions described in this Order. When the litigation has been terminated, a
9 Receiving Party must comply with the provisions of section 13 below (FINAL
10 DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a location
12 and in a secure manner that ensures that access is limited to the persons authorized
13 under this Order.

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
15 otherwise ordered by the court or permitted in writing by the Designating Party, a
16 Receiving Party may disclose any information or item designated
17 "CONFIDENTIAL" only to:

18 (a) the Receiving Party's Outside Counsel of Record in this action, as
19 well as employees of said Outside Counsel of Record to whom it is reasonably
20 necessary to disclose the information for this litigation; *provided, however*, that each
21 non-lawyer given access to such material shall be advised that such materials are
22 being disclosed pursuant to, and are subject to, the terms of this Stipulation and
23 Protective Order and that they may not be disclosed other than pursuant to its terms;

24 (b) the officers, directors, and employees (including House Counsel) of
25 the Receiving Party to whom disclosure is reasonably necessary for this litigation
26 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
27 A);
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1 (c) Experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this litigation and who have signed the
3 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants,
6 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
7 for this litigation and who have signed the "Acknowledgment and Agreement to Be
8 Bound" (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure
10 is reasonably necessary and who have signed the "Acknowledgment and Agreement
11 to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or
12 ordered by the court. Pages of transcribed deposition testimony or exhibits to
13 depositions that reveal Protected Material must be separately bound by the court
14 reporter and may not be disclosed to anyone except as permitted under this
15 Stipulated Protective Order.

16 (g) the author or recipient of a document containing the information or
17 a custodian or other person who otherwise possessed or knew the information.

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
19 IN OTHER LITIGATION

20 If a Party is served with a subpoena or a court order issued in other
21 litigation that compels disclosure of any information or items designated in this
22 action as "CONFIDENTIAL," that Party must:

23 (a) promptly notify in writing the Designating Party. Such notification
24 shall include a copy of the subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena or
26 order to issue in the other litigation that some or all of the material covered by the
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1 subpoena or order is subject to this Protective Order. Such notification shall include
2 a copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party
6 served with the subpoena or court order shall not produce any information
7 designated in this action as "CONFIDENTIAL" before a determination by the court
8 from which the subpoena or order issued, unless the Party has obtained the
9 Designating Party's permission. The Designating Party shall bear the burden and
10 expense of seeking protection in that court of its confidential material – and nothing
11 in these provisions should be construed as authorizing or encouraging a Receiving
12 Party in this action to disobey a lawful directive from another court.

13 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
14 PRODUCED IN THIS LITIGATION

15 (a) The terms of this Order are applicable to information produced by a
16 Non-Party in this action and designated as "CONFIDENTIAL." Such information
17 produced by Non-Parties in connection with this litigation is protected by the
18 remedies and relief provided by this Order. Nothing in these provisions should be
19 construed as prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to
21 produce a Non-Party's confidential information in its possession, and the Party is
22 subject to an agreement with the Non-Party not to produce the Non-Party's
23 confidential information, then the Party shall:

24 (1) promptly notify in writing the Requesting Party and the Non-Party
25 that some or all of the information requested is subject to a confidentiality
26 agreement with a Non-Party;

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1 (2) promptly provide the Non-Party with a copy of the Stipulated
2 Protective Order in this litigation, the relevant discovery request(s), and a
3 reasonably specific description of the information requested; and

4 (3) make the information requested available for inspection by the
5 Non-Party.

6 (c) If the Non-Party fails to object or seek a protective order from this
7 court within 14 days of receiving the notice and accompanying information, the
8 Receiving Party may produce the Non-Party's confidential information responsive
9 to the discovery request. If the Non-Party timely seeks a protective order, the
10 Receiving Party shall not produce any information in its possession or control that is
11 subject to the confidentiality agreement with the Non-Party before a determination
12 by the court. Absent a court order to the contrary, the Non-Party shall bear the
13 burden and expense of seeking protection in this court of its Protected Material.

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a Receiving Party learns that, by inadvertence or otherwise, it has
16 disclosed Protected Material to any person or in any circumstance not authorized
17 under this Stipulated Protective Order, the Receiving Party must immediately (a)
18 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
19 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
20 the person or persons to whom unauthorized disclosures were made of all the terms
21 of this Order, and (d) request such person or persons to execute the
22 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
23 A.

24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
25 PROTECTED MATERIAL

26 When a Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other protection,
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1 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
2 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
3 may be established in an e-discovery order that provides for production without
4 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
5 as the parties reach an agreement on the effect of disclosure of a communication or
6 information covered by the attorney-client privilege or work product protection, the
7 parties may incorporate their agreement in the stipulated protective order submitted
8 to the court.

9 **12. MISCELLANEOUS**

10 12.1 Right to Further Relief. Nothing in this Order abridges the right
11 of any person to seek its modification by the court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of
13 this Protective Order no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in this
15 Stipulated Protective Order. Similarly, no Party waives any right to object on any
16 ground to use in evidence of any of the material covered by this Protective Order.

17 12.3 Filing Protected Material. Without written permission from the
18 Designating Party or a court order secured after appropriate notice to all interested
19 persons, a Party may not file in the public record in this action any Protected
20 Material. A Party that seeks to file under seal any Protected Material must comply
21 with Civil Local Rule 79-5. Protected Material may only be filed under seal
22 pursuant to a court order authorizing the sealing of the specific Protected Material at
23 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
24 request establishing that the Protected Material at issue is privileged, protectable as
25 a trade secret, or otherwise entitled to protection under the law. If a Receiving
26 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
27 5(d) is denied by the court, then the Receiving Party may file the information in the
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1 public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the
2 court.

3 13. FINAL DISPOSITION

4 Upon written request within 60 days after the final disposition of this
5 action, as defined in paragraph 4, each Receiving Party must return all Protected
6 Material to the Producing Party or destroy such material. As used in this
7 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
8 summaries, and any other format reproducing or capturing any of the Protected
9 Material. Whether the Protected Material is returned or destroyed, the Receiving
10 Party must submit a written certification to the Producing Party (and, if not the same
11 person or entity, to the Designating Party) by the 60-day deadline that (1) identifies
12 (by category, where appropriate) all the Protected Material that was returned or
13 destroyed and (2) affirms that the Receiving Party has not retained any copies,
14 abstracts, compilations, summaries or any other format reproducing or capturing any
15 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
16 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
17 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
18 reports, attorney work product, and consultant and expert work product, even if such
19 materials contain Protected Material. Any such archival copies that contain or
20 constitute Protected Material remain subject to this Protective Order as set forth in
21 Section 4 (DURATION).

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23 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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1 Dated: March 3, 2017

GRODSKY & OLECKI LLP
Michael J. Olecki
John Metzidis-Drennan

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By: 
John Metzidis-Drennan

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Attorneys for Plaintiff and Judgment Creditor

7

8 Dated: March 3, 2017

GARCIA RAINEY BLANK &
BOWERBANK LLP
Andrea F. Hattemer

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By: 
Andrea F. Hattemer

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Attorneys for Defendant and Judgment Debtor

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ORDER

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GOOD CAUSE APPEARING, the Court hereby approves this Stipulation and
Protective Order.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

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DATED: 3/9/17



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Hon. Charles F. Eick
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I hereby acknowledge that I, _____ [NAME], of
_____ [POSITION AND EMPLOYER], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order
that was issued by the United States District Court for the Central District of
California on _____ [date] in the case of **Levine v. Brown Case**
No. 2:15-cv-09453-GHK (Ex). I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information
or item that is subject to this Stipulated Protective Order to any person or entity except
in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Central District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

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Signature: _____